

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
DENISE G. TIERNAN,

Plaintiff,

-against-

CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY  
GROUP, L.P.,

Defendants-Petitioner  
-----X

Civil Action No. 08-CV-  
FEB 19 2008

U.S.D.C. S.D.N.Y.  
NOTICE OF REMOVAL

Supreme, Bronx  
Index No.: 303142/07

**08 CV 1633**  
**JUDGE STEIN**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK:

Defendants-Petitioners, CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY GROUP, L.P.,  
("Petitioners"), by their attorneys, Simmons, Jannace, & Stagg,  
L.L.P., upon information and belief, respectfully petition the  
Court, pursuant to 28 U.S.C. § 1441, as follows:

1. On or about December 11, 2007, the above-captioned civil  
action was commenced and is now pending in the Supreme Court of the  
State of New York, County of Bronx. A trial has not yet been had  
therein. A copy of the Summons and Complaint is annexed as **Exhibit**  
**"A"**. Petitioners have not yet served an answer to Plaintiff's  
Complaint.

2. The action seeks monetary damages allegedly suffered by  
plaintiff, DENISE G. TIERNAN, allegedly caused by Petitioners.  
Plaintiff's Complaint sounds in negligence and breach of warranty.

3. The action involves a controversy between citizens of different states, in that: (a) Plaintiff is a citizen of the State of New York; (b) Petitioner, CONTROL BUILDING SERVICES, INC., is now, and was at the time the action was commenced, incorporated pursuant to the laws of the State of New Jersey with its principal place of business in New Jersey; (c) Petitioner, SIMON PROPERTY GROUP, INC., is now, and was at the time the action was commenced, incorporated pursuant to the laws of the State of Delaware with its principal place of business in Indiana; and (d) Petitioner, SIMON PROPERTY GROUP, L.P., is now, and was at the time the action was commenced, a partnership formed pursuant to the laws of the State of Delaware with its principal place of business in Indiana.

4. This action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1331. There is complete diversity between petitioners and plaintiff. In addition, upon information and belief and based on conversations with plaintiff's counsel, the amount in controversy exceeds \$75,000.

5. This Notice of Removal is being filed within thirty (30) days after receipt by Petitioners of Plaintiff's Complaint and its good faith basis for believing that the amount in controversy exceeds \$75,000.

6. Written notice of the filing of this Notice of Removal will be given to plaintiff promptly after the filing of this Notice.

7. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, promptly after the filing of this Notice.

8. Attached to this Notice of Removal, and by reference made a part hereof, are true and correct copies of all process and pleadings filed herein.

9. By filing this Notice of Removal, Petitioners do not waive any defense which may be available to it, specifically including, but not limited to, their right to contest *in personam* jurisdiction over Petitioners, improper service of process and the absence or inconvenience of venue in this Court or the Court from which this action has been removed.

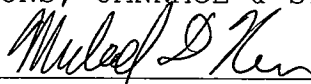
**WHEREFORE**, Petitioners pray that the above-captioned action now pending in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to this Court.

Dated: Syosset, New York  
February 12, 2008

Yours, etc.,

SIMMONS, JANNACE & STAGG, L.L.P.

By



MICHAEL D. KERN (mk 9573)

Attorneys for Defendants/Petitioners  
CONTROL BUILDING SERVICES, INC.,  
SIMON PROPERTY GROUP, INC. and  
SIMON PROPERTY GROUP, L.P.

**Office & P.O. Address:**

75 Jackson Avenue  
Syosset, New York 11791-3139  
(516) 357-8100

TO: ALPERT & KAUFMAN, LLP  
Attorneys for Plaintiff  
DENISE G. TIERNAN

**Office & P.O. Address:**

The Woolworth Building  
233 Broadway - Suite 707  
New York, New York 10279  
(212) 349-2000

Notice Removal

**Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.: 30 3142-07

SUMMONS

DENISE G. TIERNAN,

Plaintiff;

-against-

Plaintiff designates BRONX County  
as the place of trial.

The basis of venue is:  
Plaintiff's residence

Plaintiff resides at:  
1010 Throgs Neck Expressway  
Bronx, NY 10465  
County of Bronx

CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY  
GROUP, L.P.,

Defendants.

To the above named Defendant(s):

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Yours, etc.

ALPERT & KAUFMAN, LLP

By:

Morton Alpert  
Attorneys for Plaintiff  
Office & P.O. Address  
233 Broadway, Suite 707  
New York, New York 10279  
212-349-2000

Dated: New York, New York  
November 26, 2007

TO: CONTROL BUILDING SERVICES, INC.  
80 State Street  
Albany, New York 12207

SIMON PROPERTY GROUP, INC.  
SIMON PROPERTY GROUP, L.P.  
C/o CT Corporation System  
111 Eighth Avenue  
New York, NY 10011

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X

Index No.:

DENISE G. TIERNAN,

Plaintiff,

COMPLAINT

-against-

CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY  
GROUP, L.P.,

Defendants.

-----X

Plaintiff, Denise G. Tiernan, by her attorneys, Alpert &  
Kaufman, LLP, complaining of the defendants respectfully sets forth  
and alleges as follows:

FIRST: At all times hereinafter mentioned, plaintiff, Denise  
G. Tiernan was and still is a resident of the County of Bronx,  
State of New York.

SECOND: Upon information and belief at all times hereinafter  
mentioned, defendant, Control Building Services, Inc. was and still  
is a foreign business corporation organized and existing pursuant  
to the laws of the State of New York, having its office for the  
principal transaction of business in the County of Westchester,  
State of New York.

THIRD: Upon information and belief at all times hereinafter  
mentioned, defendant, Simon Property Group, Inc. was and still is  
a foreign business corporation organized and existing pursuant to  
the laws of the State of New York, having its office for the

principal transaction of business in the County of Westchester, State of New York.

FOURTH: Upon information and belief at all times hereinafter mentioned, defendant, Simon Property Group, L.P. was and still is a foreign business corporation organized and existing pursuant to the laws of the State of New York, having its office for the principal transaction of business in the County of Westchester, State of New York.

FIFTH: Upon information and belief at all times hereinafter mentioned, defendant, Control Building Services, Inc., owned, operated, maintained and controlled The Westchester Mall located at 125 Westchester Avenue, County of Westchester, State of New York.

SIXTH: Upon information and belief at all times hereinafter mentioned, defendant, Simon Property Group, Inc., owned, operated, maintained and controlled The Westchester Mall, 125 Westchester Avenue, County of Westchester, State of New York.

SEVENTH: Upon information and belief at all times hereinafter mentioned, defendant, Simon Property Group, L.P., owned, operated, maintained and controlled The Westchester Mall, 125 Westchester Avenue, County of Westchester, State of New York.

EIGHTH: Defendant, Control Building Services, Inc., by its agents, servants and/or employees had a duty to maintain the aforesaid premises thereat in a reasonably safe condition for members of the public including the plaintiff, Denise G. Tiernan



herein.

NINTH: Defendant, Simon Property Group, Inc., by its agents, servants and/or employees had a duty to maintain the aforesaid premises thereat in a reasonably safe condition for members of the public including the plaintiff, Denise G. Tiernan herein.

TENTH: Defendant, Simon Property Group, L.P., by its agents, servants and/or employees had a duty to maintain the aforesaid premises thereat in a reasonably safe condition for members of the public including the plaintiff, Denise G. Tiernan herein.

ELEVENTH: That on May 26, 2007, plaintiff, Denise G. Tiernan was caused to slip and fall and be precipitated down to the ground and/or pavement at the aforementioned location.

TWELFTH: That said accident and injuries resulting therefrom took place solely as a result of the negligence, carelessness and recklessness of the defendants, by their agents, servants and/or employees, in the ownership, operation, control and maintenance of the aforesaid premises.

THIRTEENTH: The defendant, Control Building Services, Inc., by its agents, servants and/or employees was reckless, careless and negligent in the ownership, operation, management and control of the aforementioned premises.

FOURTEENTH: The defendant, Simon Property Group, Inc., by its agents, servants and/or employees was reckless, careless and negligent in the ownership, operation, management and control of

the aforementioned premises.

FIFTEENTH: The defendant, Simon Property Group, L.P., by its agents, servants and/or employees was reckless, careless and negligent in the ownership, operation, management and control of the aforementioned premises.


SIXTEENTH: That solely by reason of the negligence of the defendants as aforesaid, plaintiff, Denise G. Tiernan, became sick, sore, lame and disabled and still remains and still suffers; was caused to suffer great pain and mental anguish; sustained severe injuries in and about her head, body, arms and limbs, including injuries to soft tissues and ligaments; was obligated to expend sums of money for medical treatment; was caused to limit and curtail her activities; was caused to spend periods of time at home in an effort to enable her injuries to heal, and upon information and belief, will continue to suffer the results of severe personal injuries for an extended period of time.

SEVENTEENTH: The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against the defendants in an amount to be determined by the trial of this action together with costs and disbursements of this action.

Yours, etc.

ALPERT & KAUFMAN, LLP



By:

Morton Alpert  
Attorneys for Plaintiff  
Office & P.O. Address  
233 Broadway, Suite 707  
New York, New York 10279  
212-349-2000

Dated: New York, New York  
November 26, 2007

TO: CONTROL BUILDING SERVICES, INC.  
80 State Street  
Albany, New York 12207

SIMON PROPERTY GROUP, INC.  
SIMON PROPERTY GROUP, L.P.  
C/o CT Corporation System  
111 Eighth Avenue  
New York, NY 10011

Index No. 303142/07  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

DENISE G. TIERNAN,

Plaintiff,

-against-

CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY  
GROUP, L.P.,

Defendants..

SUMMONS AND COMPLAINT

Signature (Rule 130-1.1a)

MORTON ALPERT

Alpert & Kaufman, LLP  
Attorneys for Plaintiff  
233 Broadway  
New York, NY 10279  
212-349-2000

TO: